

Article 8. Transfrontier Shipments of Hazardous Waste for Recovery Within the OECD**§66262.80. Applicability.**

(a) The requirements of 40 CFR Part 262, Subpart H or this article apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the federal definition of hazardous waste in 40 CFR section 261.3 and it is subject to either the Federal manifesting requirements of 40 CFR Part 262, or to the universal waste management standards of 40 CFR Part 273.

(b) Any person (notifier, consignee, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any notifier duties, if applicable, under 40 CFR Part 262, Subpart H or this article.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code: and 40 CFR Section 262.80.

HISTORY

1. Change without regulatory effect adding new article 8 (sections 66262.80-66262.89) and section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.81. Definitions.

The following definitions apply to 40 CFR Part 262, Subpart H or this article.

(a) "Competent authorities" means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

(b) "Concerned countries" means the exporting and importing OECD member countries and any OECD member countries of transit.

(c) "Consignee" means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.

(d) "Country of transit" means any designated OECD country in 40 CFR sections 262.58(a)(1) and (a)(2) or sections 66262.58(a)(1) and (a)(2) other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

(e) "Exporting country" means any designated OECD member country in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) from which a transfrontier movement of wastes is planned or has commenced.

(f) "Importing country" means any designated OECD country in 40 CFR section 262.58(a)(1) or 66262.58(a)(1) to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

(g) "Notifier" means the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the exporting country, notifier is interpreted to mean a person domiciled in the U.S.

(h) "OECD area" means all land or marine areas under the national jurisdiction of any designated OECD member country in 40 CFR section 262.58 or section 66262.58. When the regulations refer to shipments to or from an OECD country, this means OECD area.

(i) "Recognized trader" means a person who, with appropriate authorization of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person shall act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.

(j) "Recovery facility" means an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

(k) "Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of May 27, 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket # F-94-IEHF-FFFFF) and the Organization for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France) which include:

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy;
- R2 Solvent reclamation/regeneration;
- R3 Recycling/reclamation of organic substances which are not used as solvents;
- R4 Recycling/reclamation of metals and metal compounds;
- R5 Recycling/reclamation of other inorganic materials;
- R6 Regeneration of acids or bases;
- R7 Recovery of components used for pollution control;
- R8 Recovery of components from catalysts;
- R9 Used oil re-refining or other reuses of previously used oil;

- R10 Land treatment resulting in benefit to agriculture or ecological improvement;
- R11 Uses of residual materials obtained from any of the operations numbered R1-R10;
- R12 Exchange of wastes for submission to any of the operations numbered R1-R11;
- R13 Accumulation of material intended for any operation in Table 2.B;

(f) "Transfrontier movement" means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.81.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.82. General Conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to a green-, amber-, or red-list and by U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a). The green-, amber-, and red-lists are incorporated by reference in 40 CFR section 262.89(e) or section 66262.89(e).

(1) Wastes on the green-list are subject to existing controls normally applied to commercial transactions, except as provided below:

(A) Green-list wastes that are considered hazardous under U.S. national procedures are subject to amber-list controls.

(B) Green-list wastes that are sufficiently contaminated or mixed with amber-list wastes, such that the waste or waste mixture is considered hazardous under U.S. national procedures, are subject to amber-list controls.

(C) Green-list wastes that are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures shall be handled in accordance with the red-list controls.

(2) Wastes on the amber-list that are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are subject to the amber-list controls of 40 CFR Part 262, Subpart H or this article.

(A) If amber-list wastes are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures, the wastes shall be handled in accordance with the red-list controls.

(B) [Reserved].

(3) Wastes on the red-list that are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are subject to the red-list controls of 40 CFR Part 262, Subpart H or this article. Some wastes on the amber- or red-lists are not listed or otherwise identified as hazardous under RCRA (e.g., polychlorinated biphenyls) and therefore are not subject to the amber- or red-list controls of 40 CFR Part 262, Subpart H or this article. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the federal Toxic Substances Control Act) shall restrict certain waste imports or exports. Such restrictions continue to apply without regard to 40 CFR Part 262, Subpart H or this article.

(4) Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:

(A) If such wastes are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a), these wastes are subject to the red-list controls; or

(B) If such wastes are not considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a), such wastes shall move as though they appeared on the green-list.

(b) General conditions applicable to transfrontier movements of hazardous waste.

(1) The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transfrontier movement shall be in compliance with applicable international transport agreements. These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD member country shall be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country.

(1) Re-export of wastes subject to the amber-list control system from the U.S., as the importing country, to a third country listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) shall occur only after a notifier in the U.S. provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification shall comply with the notice and consent procedures in 40 CFR section 262.83 or section 66262.83 for all concerned countries and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

(A) The 30-day period begins once the competent authorities of both the initial exporting country and new

importing country issue Acknowledgements of Receipt of the notification.

(B) The transfrontier movement shall commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) Re-export of waste subject to the red-list control system from the original importing country to a third country listed in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1) shall occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with 40 CFR section 262.83 or section 66262.83. The transfrontier movement shall not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

(3) In the case of re-export of amber- or red-list wastes to a country other than those in 40 CFR section 262.58(a)(1) or section 66262.58(a)(1), notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in 40 CFR sections 262.82(c)(1) and (c)(2) or subsections (c)(1) and (c)(2) of this section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code: and 40 CFR Section 262.82.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.83. Notification and Consent.

(a) Applicability. Consent shall be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to 40 CFR Part 262, Subpart H or this article. Hazardous wastes subject to amber-list controls are subject to the requirements of 40 CFR section 262.83(b) or subsection (b) of this section; hazardous wastes subject to red-list controls are subject to the requirements of 40 CFR section 262.83(c) or subsection (c) of this section; and wastes not identified on any list are subject to the requirements of 40 CFR section 262.83(d) or subsection (d) of this section.

(b) Amber-list wastes. The export from the U.S. of hazardous wastes as described in 40 CFR section 262.80(a) or section 66262.80(a) that appear on the amber-list is prohibited unless the notification and consent requirements of 40 CFR section 262.83(b)(1) or section 262.83(b)(2) or subsection (b)(1) or subsection (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(A) Notification. At least forty-five (45) days prior to commencement of the transfrontier movement, the notifier shall provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in 40 CFR section 262.83(e) or subsection (e) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier shall submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

(B) Tacit consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement shall commence. Tacit consent expires one calendar year after the close of the 30-day period; renotification and renewal of all consents is required for exports after that date.

(C) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement shall commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Shipments to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(A) The notifier shall provide USEPA the information identified in 40 CFR section 262.83(e) or subsection (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and shall apply to a single specific shipment or to multiple shipments as described in 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section. This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "OECD Export Notification -- Pre-approved Facility" prominently displayed on the envelope.

(B) Shipments shall commence after the notification required in 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section has been received by the competent authorities of all concerned countries, unless the notifier

has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

(c) Red-list wastes. The export from the U.S. of hazardous wastes as described in 40 CFR section 262.80(a) or section 66262.80(a) that appear on the red-list is prohibited unless notice is given pursuant to 40 CFR section 262.83(b)(1)(i) or subsection (b)(1)(A) of this section and the notifier receives written consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

(d) Unlisted wastes. Wastes not assigned to the green-, amber-, or red-list that are considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are subject to the notification and consent requirements established for red-list wastes in accordance with 40 CFR section 262.83(c) or subsection (c) of this section. Unlisted wastes that are not considered hazardous under U.S. national procedures as defined in 40 CFR section 262.80(a) or section 66262.80(a) are not subject to amber or red controls when exported or imported.

(e) Notification information. Notifications submitted under 40 CFR section 262.83 or this section shall include:

- (1) Serial number or other accepted identifier of the notification form;
- (2) Notifier name and USEPA identification number (if applicable), address, and telephone and telefax numbers;
- (3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;
- (4) Consignee name (if not the owner or operator of the recovery facility) address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;
- (5) Intended transporters or their agents;
- (6) Country of export and relevant competent authority, and point of departure;
- (7) Countries of transit and relevant competent authorities and points of entry and departure;
- (8) Country of import and relevant competent authority, and point of entry;
- (9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;
- (10) Date foreseen for commencement of transfrontier movement;
- (11) Designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and
- (12) Certification/Declaration signed by the notifier that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement.

Name: _____

Signature: _____

Date: _____

The U.S. does not currently require financial assurance; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code: and 40 CFR Section 262.83.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.84. Tracking Document.

(a) All U.S. parties subject to the contract provisions of 40 CFR section 262.85 or section 66262.85 shall ensure that a tracking document meeting the conditions of 40 CFR section 262.84(b) or section 66262.84(b) accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in 40 CFR sections 262.84(a)(1) and (2) or subsections (a)(1) and (a)(2) of this section.

(1) For shipments of hazardous waste within the U.S. solely by water (bulk shipments only) the generator shall forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the U.S. if exported by water, (in accordance with the manifest routing procedures of 40 CFR section 262.23(c) or section 66262.23(c)).

(2) For rail shipments of hazardous waste within the U.S. which originate at the site of generation, the generator shall forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in 40 CFR section 262.23(d) or section 66262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the U.S. if exported by rail.

(b) The tracking document shall include all information required under 40 CFR section 262.83 or section 66262.83 (for notification), and the following:

- (1) Date shipment commenced.
- (2) Name (if not notifier), address, and telephone and telefax numbers of primary exporter.
- (3) Company name and USEPA identification number of all transporters.
- (4) Identification (license, registered name or registration number) of means of transport, including types of packaging.

(5) Any special precautions to be taken by transporters.

(6) Certification/declaration signed by notifier that no objection to the shipment has been lodged as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement, and that:

1. All necessary consents have been received; OR
2. The shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; OR
3. The shipment is directed at a recovery facility pre- authorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries.

Name: _____

Signature: _____

Date: _____

(7) Appropriate signatures for each custody transfer (e.g., transporter, consignee, and owner or operator of the recovery facility).

(c) Notifiers also shall comply with the special manifest requirements of 40 CFR section 262.54(a), (b), (c), (e), and (i) or sections 66262.54(a), (b), (c), (e), and (i) and consignees shall comply with the import requirements of 40 CFR Part 262, Subpart F or section 66262.60.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the tracking document (e.g., transporter, consignee, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to 40 CFR Part 262, Subpart H or this article, the owner or operator of the U.S. recovery facility shall send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.84.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.85. Contracts.

(a) Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements shall be executed by the notifier and the owner or operator of the recovery facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of 40 CFR section 262.85 or this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

(b) Contracts or equivalent arrangements shall specify the name and USEPA ID number, where available, of:

- (1) The generator of each type of waste;
- (2) Each person who will have physical custody of the wastes;
- (3) Each person who will have legal control of the wastes;
- (4) The recovery facility.

(c) Contracts or equivalent arrangements shall specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts shall specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the

wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

(d) Contracts shall specify that the consignee will provide the notification required in 40 CFR section 262.82(c) or section 66262.82(c) prior to re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements shall include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements. Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The U.S. does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements shall contain provisions requiring each contracting party to comply with all applicable requirements of 40 CFR Part 262, Subpart H or this article.

(g) Upon request by USEPA, U.S. notifiers, consignees, or recovery facilities shall submit to USEPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted accordance with 40 CFR section 2.203(b) will be treated as confidential and will be disclosed by USEPA only as provided in 40 CFR section 260.2. Although the U.S. does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, USEPA will request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code: and 40 CFR Section 262.85.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.86. Provisions Relating to Recognized Traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and shall be so authorized in accordance with all applicable federal laws.

(b) A recognized trader acting as a notifier or consignee for transfrontier shipments of waste shall comply with all the requirements of 40 CFR Part 262, Subpart H or this article associated with being a notifier or consignee.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code: and 40 CFR Section 262.86.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.87. Reporting and Recordkeeping.

(a) Annual reports. For all waste movements subject to 40 CFR Part 262, Subpart H or this article, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in 40 CFR section 262.51 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under 40 CFR Part 262, Subpart H or this article, the primary exporter may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:

- (1) The USEPA identification number, name, and mailing and site address of the notifier filing the report;
- (2) The calendar year covered by the report;
- (3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the USEPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), designation of waste type(s) from OECD waste list and applicable waste code from the OECD lists, Department of Transportation (DOT) hazard class, the name and USEPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to 40 CFR Part 262, Subpart H or this article, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kilograms (kg) but less than 1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to 40 CFR section 262.41:

(A) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(B) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Exception reports. Any person who meets the definition of primary exporter in 40 CFR section 262.51 shall file an exception report in lieu of the requirements of 40 CFR section 262.42 with the USEPA Administrator if any of the following occurs:

(1) The primary exporter has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) Recordkeeping.

(1) Persons who meet the definition of primary exporter in 40 CFR section 262.51 shall keep the following records:

(A) A copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(B) A copy of each annual report for a period of at least three years from the due date of the report; and

(C) A copy of any exception reports and a copy of each confirmation of delivery (i.e., tracking documentation) sent by the recovery facility to the notifier for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

(2) The periods of retention referred to in 40 CFR section 262.87 or this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the USEPA Administrator.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code; and 40 CFR Section 262.87.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).

§66262.88. Pre-approval for U.S. Recovery Facilities.

[Reserved.]

§66262.89. OECD Waste Lists.

(a) General. For the purposes of 40 CFR Part 262, Subpart H or this article, a waste is considered hazardous under U.S. national procedures, and hence subject to 40 CFR Part 262, Subpart H or this article, if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR section 261.3; and

(2) Is subject to either the Federal manifesting requirements of 40 CFR Part 262, subpart B, or to the universal waste management standards of 40 CFR Part 273.

(b) If a waste is hazardous under 40 CFR section 262.89(a) or subsection (a) of this section and it appears on the amber- or red-list, it is subject to amber- or red-list requirements respectively;

(c) If a waste is hazardous under 40 CFR 262.89(a) or subsection (a) of this section and it does not appear on either amber- or red-lists, it is subject to red-list requirements.

(d) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in 40 CFR section 262.82 or section 66262.82.

(e) The OECD Green-List of Wastes (revised May 1994), Amber- List of Wastes, and Red-List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations) are incorporated by reference. These incorporations by reference in federal regulations were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket #F-94-IEHF-FFFFF) and may be obtained from the Organization for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5 and 58012, Health and Safety Code: and 40 CFR Section 262.89.

HISTORY

1. Change without regulatory effect adding new section filed 8-20-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 34).